

000041DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

DATE:

51
10/21

August 29, 2008

SUBJECT: New Lease Agreement with Rancho De La Loma, LLC

GENERAL CONTRACT INFORMATION

Recommended Contractor: Rancho De La Loma, LLC
Amount of This Action: \$ 15,000
Funding Source: City
Goal: 15% Voluntary

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Rancho De La Loma, LLC submitted a Workforce Report for their San Diego County office dated August 28, 2008. The analysis of the Workforce Report indicates under representation in the following area(s):

Female Laborers

Rancho De La Loma, LLC's Workforce Report indicates an effort to comply with the employment category goals and therefore, precludes the need for an Equal Opportunity Plan.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

Beryl Rayford
EOC Program Manager by:AMJ

File: Admin WOFO 2000

Date WOFO Submitted: 8/28/2008
Input by: LadGoals reflect statistical labor force
availability for the following: 2000 CLFA
San Diego, CACity of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORTFOR
Company: Rancho De La Loma

I. TOTAL WORK FORCE:

	Black			Hispanic			Asian			American Indian			Filipino			White			Other		
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	M	F	M	F		
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	0	0	0.4%	0	0	6.2%	0	0	1	0	0	0		
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	0	0	0		
A&E, Science, Computer	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	0	0	0	0		
Technical	6.6%	0	0	14.8%	0	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	0	0	0	0		
Sales	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	0	0	0		
Administrative Support	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.6%	0	0	8.8%	0	0	0	0	0	0		
Services	5.5%	0	0	36.9%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	0	0		
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	0	0		
Laborers	4.4%	0	0	54.0%	15	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	0	0		
TOTAL		0	0		15	0		0	0		0	0		0	0		1	0		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial
Professional
A&E, Science, Computer
Technical
Sales
Administrative Support
Services
Crafts
Operative Workers
Transportation
Laborers

TOTAL EMPLOYEES		
ALL	M	F
1	1	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
0	0	0
15	15	0
TOTAL	16	0

Female
Goals
39.8%
59.5%
22.3%
49.0%
49.4%
73.2%
62.3%
8.6%
36.7%
15.2%
11.1%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.03	0	N/A	0.12	0	N/A	0.06	0	N/A	0.00	0	N/A	0.06	0	N/A	0.40	0	N/A
Professional	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
A&E, Science, Computer	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Technical	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.66	0	N/A	8.10	15	6.90	0.62	0	N/A	0.08	0	N/A	0.62	0	N/A	1.67	0	(1.67)

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

000045		REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 51 10/21			
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets		3. DATE: August 19, 2008			
4. SUBJECT: <p style="text-align: center;">New Lease Agreement with Rancho De La Loma, LLC.</p>							
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Dave Martens, 619 236-6066, MS 51A		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Gary Jones, 619 236-6264, MS 51A		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input checked="" type="checkbox"/>			
8. COMPLETE FOR ACCOUNTING PURPOSES							
FUND				9. ADDITIONAL INFORMATION / ESTIMATED COST: Fiscal Impact: \$15,000 minimum annual rent deposited into Fund 41500, Revenue Acct 75661. Job: 222432 cc: Dept. Docket Clerk Thomas Guide: 1151 B-2			
DEPT.							
ORGANIZATION							
OBJECT ACCOUNT							
JOB ORDER							
C.I.P. NUMBER							
AMOUNT							
10. ROUTING AND APPROVALS							
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>[Signature]</i>	8/22/08	8	DEPUTY CHIEF	<i>[Signature]</i>	9/19/08
2	WATER DEPT.	<i>[Signature]</i>	8/26/08	9	COO		
3	EAS	<i>[Signature]</i>	8/26/08	10	CITY ATTORNEY	<i>[Signature]</i>	9/23/08
4	EOCP/MEMO 5/3/96	<i>[Signature]</i>		11	ORIG. DEPT	<i>[Signature]</i>	9/23/08
5	LIAISON OFFICE	<i>[Signature]</i>	7/2/08	DOCKET COORD: _____ COUNCIL LIAISON: _____ COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <i>MS</i> <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 6/7/08			
6	AUDITORS	<i>[Signature]</i>	09/05/08				
7	FINANCIAL MGMT	<i>[Signature]</i>	01/15/08				
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTION(S) <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)							
Authorizing the Mayor to execute a 15-year percentage lease with Rancho De La Loma, LLC for approximately 64 acres located in the San Pasqual Valley Agricultural Preserve. The authorized use is the growing and harvesting of avocados and other related agricultural uses.							
11A. STAFF RECOMMENDATIONS: Adopt the Resolution.							
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.) <u>COUNCIL DISTRICT(S):</u> 05 <u>COMMUNITY AREA(S):</u> SAN PASQUAL VALLEY <u>ACTION REQUESTED BY:</u> Real Estate Assets Department <u>LOCATION:</u> SAN PASQUAL VALLEY, AGRICULTURAL PRESERVE <u>ENVIRONMENTAL IMPACT:</u> This activity is exempt from CEQA pursuant to state CEQA guidelines, Section 15301 Class 1, Existing Facilities. <u>ATTACHMENTS:</u> Report to Council, Leasehold Boundary Map, Area Map. <u>CITY CLERK INSTRUCTIONS:</u> DO NOT RECORD. Return documents to Real Estate Assets Department, Attn: Dave Martens, M.S. 51A for further handling.							

000047

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED:

ATTENTION: Council President and City Council

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: New Lease Agreement with Rancho De La Loma, LLC

COUNCIL DISTRICT(S): 5

CONTACT/PHONE NUMBER: Dave Martens/236-6066

REQUESTED ACTION: Authorization to execute a 15-year percentage lease agreement with Rancho De La Loma, LLC, for approximately 64 acres in the San Pasqual Valley Agricultural Preserve on Water Department property.

STAFF RECOMMENDATION: Authorize the execution of the lease agreement.

BACKGROUND: The Witman family has leased agricultural land from the City since Bill Witman arrived in the San Pasqual Valley in 1965. His son, Matt Witman, has been part of the family business for the last 26 years and is now in charge of all operations for Witman Ranch, which includes Rancho De La Loma, LLC.

The Rancho De La Loma avocado orchard was planted by a previous lessee in 1971. The lease area consists of approximately 64 acres located on a steep southern hillside within the Valley. Forty acres are used for avocado production; the remaining 24 acres are comprised of access roads, a metal storage building and fire break areas. In 1983, Witman Ranch bought the leasehold and assumed debt owed to the Small Business Association (SBA). Under new management, the leasehold became a productive business and the SBA was paid all past due loan amounts in less than the agreed timeframe. In 2003, to adjust to market trends and maximize the revenue from the avocado grove, the Witmans obtained certified organic status. Certified organic farming utilizes ecologically based practices such as cultural and biological pest management, exclusion of all synthetic chemicals, antibiotics, and hormones in crop production.

SUMMARY: The current lease has approximately two years remaining on the original 24-year term. The leasehold sustained extensive damage as a result of the October 2007 Witch Creek Fire when approximately 60% of the avocado grove and 90% of the above ground irrigation were destroyed or damaged. Matt Witman appeared before the Ad-Hoc Fire Prevention and Recovery Committee in January requesting a new lease term to enable reinvestment in the leasehold. He proposes to spend approximately \$180,000 to restore the avocado grove to pre-fire production levels within 5-7 years. He has spent approximately \$50,000 on fire debris removal and irrigation repair to date.

Staff has negotiated a new 15-year percentage lease with Matt Witman. Under the proposed lease, rent to the City will be 25% of the lessee's first \$550,000 of gross income and 33% of gross income above \$550,000 per year, less picking and packing costs. The annual minimum rent is \$15,000 per year.

Staff has determined this rent structure, which provides the City a greater share of the lessee's gross income than the existing lease, to be commensurate with the market. Over the last five years the lessee has paid an average annual rent of \$105,401. Percentage rent paid to the City in the first few years of the new lease will be lower than this amount while the lessee reestablishes production from the grove. The proposed lease also contains a fire recovery rent credit of \$25,000 for the first year and \$15,000 for the second year. However, under the new rent structure negotiated it is anticipated that once the grove is fully recovered rent will be 25-50% more than the current average.

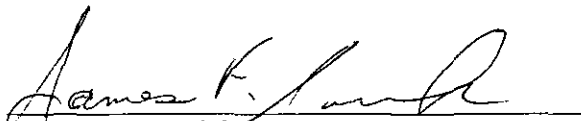
The new lease also includes updated language for water usage, insurance coverage and best management practices. The agreement conforms to the Water Department's implementation of the Groundwater Management Plan currently underway in the San Pasqual Valley, and to the San Pasqual Vision Plan implemented in 2005 as Council Policy 600-45. Rancho De La Loma's certified organic status provides further protection to the City's groundwater basin.

FISCAL CONSIDERATIONS: Rent will be deposited into the Water Department Fund 41500. Annual Minimum rent is \$15,000.

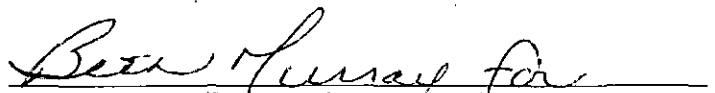
PREVIOUS COUNCIL and/or COMMITTEE ACTION: In January 2008, the Ad-Hoc Committee on Fire Prevention and Recovery authorized staff to prepare for City Council consideration a new lease with Rancho De La Loma to facilitate recovery from the October 2007 Witch Creek Fire. Staff reported to the Committee on July 10, 2008, that a new lease had been negotiated.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The San Pasqual/Lake Hodges Planning Group, Rancho Bernardo Planning Board, and San Pasqual Land Use Task Force support fire recovery efforts for agricultural lessees in the San Pasqual Valley Agricultural Preserve.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Matt Witman, Rancho De La Loma, LLC.



James F. Barwick, Director
Real Estate Assets Department



Approved: William Anderson, FAICP
Deputy Chief Operating Officer: Executive Director
City Planning and Development

Attachments: Project Location Map
DCM 08/19/08

ORIGINAL

000049



THE CITY OF SAN DIEGO

AND

RANCHO DE LA LOMA, LLC.

Percentage Lease

LEASE OUTLINE

SECTION 1: USES.....	1
1.1 Premises.	1
1.2 Uses.....	1
1.3 Related Council Actions.	1
1.4 Quiet Possession.	2
1.5 Easements and Reservations.....	2
1.6 Competent Management.	3
SECTION 2: TERM.....	3
2.1 Commencement.....	3
2.2 Holdover.....	3
2.3 Quitclaim and Surrender of LESSEE'S Interest.....	3
2.4 Lessee Right to Terminate.....	4
SECTION 3: RENT	4
3.1 Time and Place of Payment.....	4
3.2 Payment Procedure.....	5
3.3 Gross Income.....	6
3.4 Inspection of Records.	6
3.5 Delinquent Rent and Audit Fees.....	8
3.6 Unauthorized Use Charge.....	9
3.7 Payment for Right to Use Water.	9
3.8 Water Payment Formula.....	9
3.9 Rent Credit.	10

SECTION 4: ASSIGNMENT	10
4.1 Time is of Essence; Provisions Binding on Successors.	10
4.2 Assignment and Subletting	10
4.3 Equity Sharing.	11
4.4 Encumbrance	12
4.5 Defaults and Remedies.	13
4.6 Eminent Domain.	14
SECTION 5: INSURANCE RISKS/SECURITY	15
5.1 Indemnity	15
5.2 Insurance.	16
5.3 Waste, Damage, or Destruction.	18
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	18
6.1 Acceptance of Premises.	18
6.2 Entry and Inspection.	18
6.3 Maintenance.	19
6.4 Improvements/Alterations.	19
6.5 Utilities.	19
6.6 Liens.	19
6.7 Taxes	20
6.8 Signs.	20
6.9 Ownership of Improvements and Personal Property	20
6.10 Unavoidable Delay.	21

SECTION 7: GENERAL PROVISIONS.....	21
7.1 Notices.....	21
7.2 Compliance with Law.....	22
7.3 CITY Approval.....	22
7.4 Nondiscrimination.....	22
7.5 Compliance with CITY'S Equal Opportunity Contracting Program.....	23
7.6 Partial Invalidity.....	23
7.7 Legal Fees.....	24
7.8 Number and Gender.....	24
7.9 Captions.....	24
7.10 Entire Understanding.....	24
7.11 CITY Employee Participation Policy.....	24
7.12 Drug-free Workplace.....	25
7.13 Disabled Access Compliance.....	25
7.14 Criminal Notice.....	26
7.15 CITY Option to Purchase.....	26
7.16 Standard of Employees.....	27
7.17 Relocation Payments.....	27
7.18 Supersedure.....	27
SECTION 8: AGRICULTURAL PROVISIONS.....	27
8.1 Water Quality – Resource Management Plan, Best Management Practices, and Storm Water Pollution Prevention Plan.....	27
8.2 Reporting Requirements.....	28

8.3 Noxious Weeds, Pests, and Erosion.....	28
8.4 No Warranty.....	28
8.5 Hold Harmless, Flood Damage and Other Acts of God.	28
8.6 Water Rights.....	29
SECTION 9: SPECIAL PROVISION.....	31
9.1 Potential Construction of Public Hiking, Biking and Riding Trails.	31
9.2 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites.	31
9.3 Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites.....	32
9.4 Boundary Adjustments.....	32
9.5 Leasehold Boundaries.....	32
9.6 Housing of Permanent Employees.....	32
9.7 Annual Report on Farmworker Housing.	33
9.8 City's Right to Buy Back Leasehold Interest.	33
9.9 Hazardous/Toxic Waste.....	34
SECTION 10: SIGNATURES.....	36
10.1 Signature Page.....	36
EXHIBITS	37
SECTION 11:	37
11.1 Exhibit A - Premises.	37
11.2 Exhibit B – Offsite Well Location.....	38

**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and RANCHO DE LA LOMA, LLC, a limited liability company, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property described as a portion of APN 276-031-02 in the community of San Pasqual Valley, City of San Diego, County of San Diego, State of California, consisting of approximately 64 acres and further described in Section 11.1, Exhibit A-Premises, attached to and made part of this agreement, including the right to use the water from a well located off the leased premises and as further described in Section 11.1, Exhibit B-Offsite Well Location for the purposes provided for in Section 1.2, Uses, subject to Section 8.6, Water Rights, hereof. The real property is hereinafter called the "premises" or "leased premises." It is further agreed that the leasehold has not been surveyed however CITY and LESSEE agree to approximate acreage.

1.2 Uses.

It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of growing and harvesting avocado crops and a related storage facility, and for such other related or incidental purposes as may be first approved in writing by the Mayor, and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.3 Related Council Actions.

By the granting of this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard

to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.4 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the Mayor of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the leased premises, together with the right to store and recapture water from the soils beneath the surface of the leased premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the leased premises for the purpose of making repairs to, or developing, municipal resources and services. This shall include CITY'S right to use the access road to the communication site, maintained by LESSEE, located on the premises and further described in Section 11.1, Exhibit A-Premises. In addition, LESSEE shall provide access to well(s) on the leased premises for the CITY to conduct tests, such as, but not limited to, aquifer tests, groundwater-level measurements, and water quality sampling.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management.

Throughout the term of this Lease, LESSEE shall provide competent management of the leased premises to the satisfaction of the Mayor. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of avocado groves, using sustainable agricultural and best management practices whenever possible, and related activities in a fiscally responsible manner.

SECTION 2: TERM

2.1 Commencement.

The term of this agreement shall be fifteen (15) years commencing on January 1, 2009 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney. "Lease Year" as used in this Lease shall mean the 12-month period commencing on January 1 of each year.

2.2 Holdover.

Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

2.3 Quitclaim and Surrender of LESSEE'S Interest.

On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this Lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this Lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this Lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the Mayor.

2.4 Lessee Right to Terminate.

The LESSEE may terminate this agreement with six months prior written notice delivered to the CITY, if the cost of water or the cost to treat water quality from the underground water supply for LESSEE'S determined uses of the leased premises becomes cost prohibitive.

SECTION 3: RENT

3.1 Time and Place of Payment.

All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165 or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, CA 92101.

The place of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- a. Minimum Rent. The annual minimum rent established for the lease term following the Effective Date of this Lease is \$15,000.00, payable quarterly at \$3,750.00 per quarter. If the minimum rent is greater than the percentage rent on a Lease Year basis, then the annual minimum rent is required to be paid for that Lease Year. Minimum rents are to be paid in quarterly installments and annual percentage rents are due pursuant to Section 3.2, Payment Procedure, hereof.

LESSEE shall pay quarterly installments of the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- b. Percentage Rents. Percentage rents will be calculated on an annual basis and will consist of the following percentages of the gross income generated from the use of the premises:

Percentages

Twenty-Five Percent (25%)

Business Activities

Of gross income, less picking and packing costs (including marketing fees combined with these costs), from the sale of avocados up to \$550,000.

Thirty-Three Percent (33%)	Of gross income, less picking and packing costs (including marketing fees combined with these costs), from the sale of avocados in excess of \$550,000.
One-hundred Percent (100%)	Of gross income from all unauthorized sources.

The Mayor, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the Mayor prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the Mayor shall be subject to the requirements of Section 3.6, Unauthorized Use Charge, hereof.

3.2 Payment Procedure.

On or before January 31 following the Lease Year in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. The quarterly payments of the annual minimum rent made in any Lease Year until the full annual rent is achieved.
- b. Total gross receipts for the subject period, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- c. Total picking and packing costs of avocado production for the subject period.
- d. The percentage rental due CITY, computed and totaled.
- e. The accumulated total of all rents previously paid for the current Lease Year.
- f. Payment in the greater of the two following amounts:

The annual minimum rent, less any quarterly payments already made for the current Lease Year, or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations shall also be included beginning upon the earliest of the following dates (whether or not prior approval was given by CITY as required by this Lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.

3.3 Gross Income.

"Gross income" or "gross receipts", as used in this Lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include picking and packing costs (including marketing fees combined with these costs) of avocado production, federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises, refunds of deposits, or annual road maintenance fee paid to LESSEE per Operating Agreement dated September 24, 1991. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this Lease.

3.4 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales

details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each Lease Year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the Lease Year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.4a. hereinabove, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

LESSEE agrees to make available to CITY upon demand, any and all records pertaining to the costs and usage of water on the leased premises which shall include records of costs of construction, maintenance, operation and pumping, and meter readings. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a cause for termination of the Lease. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this Lease and rent due as determined by the audit(s); or
- (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.5, Delinquent Rent and Audit Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the Mayor of the audit(s) findings.

- e. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination.

3.5 Delinquent Rent and Audit Fees.

If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional ten percent (10%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the

specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.

3.6 Unauthorized Use Charge.

LESSEE shall pay CITY one-hundred percent (100%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is subject to the due date provided in this Lease for rental payments and the provision for delinquent rent. The existence of the one-hundred percent (100%) charge in this clause and the payment of this charge or any part of it does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to LESSEE for participating in or allowing any unauthorized use of the leased premises.

3.7 Payment for Right to Use Water.

As provided in Section 1.1, Premises, it is understood and agreed by CITY and LESSEE that the rent includes and covers LESSEE'S right to pump and use water from any wells on the premises, for the uses set forth in Section 1.2, Uses. However, if in the opinion of the Mayor an additional water charge is deemed warranted for underground water pumped from wells, the CITY shall notice LESSEE one year prior to implementation of the additional water charge. The additional water charge shall be a percentage of the cost of untreated water and will be determined solely by the Mayor who shall have the right to periodically adjust the charge upward or downward to reflect changes in the cost of untreated water as determined by the CITY'S Water Department. The rent may be adjusted to reflect additional water charge. All costs associated with the use of ground water shall be at LESSEE expense.

3.8 Water Payment Formula.

The cost for ground water shall be reviewed and adjusted, if necessary, each year on January 1. The cost for water will be the San Diego County Water Authority (CWA) raw water cost to the CITY, and take into consideration credit for water pumping cost, infrastructure costs related to the well, water returned to groundwater, and water quality. Pumping cost shall be the utility cost to bring the water to the well head at 40-60 pounds per square inch (PSI). Infrastructure cost is the cost of maintaining the pump and well. Water quality relates to the quality of water, location in the valley, and approved leasehold use.

3.9 Rent Credit.

To help LESSEE recover from the damage sustained on the Premises as a result of the October 2007 wild fires, the CITY will deduct \$25,000 from the percentage rent due in the first Lease Year and \$15,000 from the percentage rent due in the second Lease Year.

SECTION 4: ASSIGNMENT4.1 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

4.2 Assignment and Subletting.

LESSEE shall not assign this Lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the Mayor in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the Mayor.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The Mayor shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 4.3, Equity Sharing, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this Lease or the requested sublease otherwise be revised to comply with current standard CITY lease requirements. Pursuant to City Charter Section 225, the Mayor must

review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee. The Mayor's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.3 Equity Sharing.

LESSEE agrees that as additional consideration for this Lease and in addition to all rent otherwise payable to CITY, CITY shall be entitled to participate in any "equity" taken out by the LESSEE during the lease term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment or major sublease. "Major sublease" shall mean any sublease or subleases which individually or cumulatively involves twenty-five (25%) percent or more of the total leasehold area. Also, "equity" shall mean any proceeds of a loan for which the leasehold interest is pledged as security, proceeds of which are not totally expended for permanent leasehold improvements as described above. In the event of any action resulting in "equity" as described above, LESSEE agrees that CITY shall be entitled to ten percent (10%) of any such equity as additional consideration for CITY entering into this Lease. The amount upon which the ten percent (10%) shall be based the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances, regarding claims and judgments. Prior to CITY'S consent to any assignment, major subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph together with an acknowledgment from the proposed assignee, sublessee or a refinancing agencies to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction be it an assignment, a sublease or a refinancing. In the instance of a major sublease which provides for periodic payment of rent, CITY shall be entitled to fifty percent (50%) of the difference between the rent paid by LESSEE to CITY and the rent paid by the sublessee to LESSEE, which amounts shall be added to the periodic rent paid to CITY. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the Mayor determines that the legal and equitable ownership interests in the legal or fictitious name of the LESSEE has not changed, as there is no change in the equity, in beneficial use of or legal title to the leasehold as an asset or the income produced thereby.

4.4 Encumbrance.

Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the Mayor. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the Mayor, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY, and further that LESSEE understands and specifically agrees that the Mayor shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the Lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the Mayor must review and approve every person or entity which will have a financial interest in this Lease. The Mayor's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.5 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this Lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it, any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.5a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this

Lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the Mayor in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the Mayor or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the Mayor to take action or require the cure of any default after such default is brought to the attention of the City Council by the Mayor or by any concerned citizen.

4.6 Eminent Domain.

If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

CITY shall notify LESSEE as soon as reasonably possible of any above-mentioned action.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity.

LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall deliver to CITY a current certificate of insurance for:
- (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
 - (2) Fire, extended coverage, and vandalism insurance policy on all CITY owned insurable property on the premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. LESSEE shall submit to the CITY recommendations and an accounting of funds used to restore the leasehold improvements. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.4, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
 - (3) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the leased premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage.
 - (4) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- b. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- c. Primary & Non-Contributory. Insurance policies shall be endorsed such that that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the

duration of the Term and any extended use. The certificate(s) of insurance shall be kept in force for the duration of the Term and any extended use.

- d. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- e. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- f. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.
- g. Modification. To assure protection from and against the kind and extent of risk existing on the leased premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to LESSEE'S use of the leased premises.
- h. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the leased premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- i. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE'S insurable property on the leased premises, excepting wells, irrigation piping, and crops, in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

5.3 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

In the event of flood damage and it becomes evident that the agreed use per this Lease will not practicable, the LESSEE may opt to return that portion to the CITY and have the leasehold reduced accordingly.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.1 Acceptance of Premises.

By signing this Lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the premises are in the condition called for by this Lease. LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

6.2 Entry and Inspection.

CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. If such entry or inspection by CITY discloses that the premises are not in

a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

6.3 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of all portions of the premises and all improvements located on the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY. LESSEE is responsible for compliance with Federal and State regulations such as, but not limited to, Administrative Code, Title 14, Section 4307; and Penal Code, Title 14, Section 622.5 which deal with the protection of cultural resources.

6.4 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the Mayor. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the premises without prior written approval by the Mayor and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.5 Utilities.

LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises.

6.6 Liens.

LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations,

improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 48 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, plant or tree material, in-ground irrigation and water wells, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this Lease.
- b. If CITY elects not to assume ownership of all or any improvements, plant or tree material, in-ground irrigation and water wells, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days

prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond the expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.

6.10 Unavoidable Delay.

If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid,

000076

addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

CITY:

Mayor
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

LESSEE:

Matt Witman
Rancho De La Loma
P.O. Box 1959
Escondido, CA 92033-1959

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the Mayor or his authorized representative under the authority of any such law, statute, ordinance or regulation.

7.3 CITY Approval.

The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the Mayor unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination.

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of subcontracting provided by firms during the period covered by the report. This information should be accompanied by an invoice from each subconsultant/subcontractor/vendor/ service provider listed in the report.
- b. Equal Employment Opportunity. LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Upon request by the City of San Diego, LESSEE will submit a current Work Force Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that LESSEE will take to achieve the CITY'S goal for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities.

Further, LESSEE will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each subcontractor.

- c. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

7.6 Partial Invalidity.

If any term, covenant, condition, or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

7.7 Legal Fees.

In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

7.8 Number and Gender.

Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

7.9 Captions.

The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. Such lack of consecutive numbers is unintentional and shall have no effect on the enforceability of this Lease.

7.10 Entire Understanding.

This Lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

7.11 CITY Employee Participation Policy.

It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It

is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace.

LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance.

LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

7.14 Criminal Notice.

The California Department of Justice, sheriffs departments, police departments serving jurisdictions of 200,000 or more and many other local law enforcement authorities maintain for public access a data base of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of Penal Code. The data base is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The Department of Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

7.15 CITY Option to Purchase.

In the event LESSEE desires to dispose of its interest in this Lease, together with any of its interest in improvements, trade fixtures, and furnishings owned by LESSEE on the leased premises, CITY shall be given the first right to purchase said interest and improvements at a mutually agreeable price. If CITY does not exercise such right to purchase, LESSEE shall not then sell or offer to sell its interest at a lower price without first reoffering to CITY the right to purchase at such lower price.

7.16 Standard of Employees.

LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.17 Relocation Payments.

LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.

7.18 Supersedure.

It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 1st day of January 1987 filed with the office of the City Clerk as Document No. 735836, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8: AGRICULTURAL PROVISIONS

8.1 Water Quality – Resource Management Plan, Best Management Practices, and Storm Water Pollution Prevention Plan.

CITY and LESSEE are committed to the implementation of programs to manage activities on the premises in a manner which aids in the protection of the City of San Diego's valuable water resources. LESSEE shall comply with the Resource Management Plan ("RMP"), Best Management Practices ("BMP") including the Storm Water Pollution Prevention Plan ("SWPPP") approved by CITY'S Storm Water Management Program. LESSEE shall submit for review and approval by the CITY'S Water Department, prior to the execution of this Lease, RMP, BMP, and SWPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the premises. The RMP, BMP, and SWPPP will be approved and periodically reviewed by the Water Department. Upon written notice from the Mayor requesting an update, LESSEE shall submit updated plans for the Water Department review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the RMP, BMP, and SWPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the RMP, BMP, and SWPPP have been developed and implemented, specific to the leasehold areas and approved use, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents and vendors of the RMP, BMP, and SWPPP.

8.2 Reporting Requirements.

LESSEE agrees to provide to the Water Department reports about all activities conducted on the leased premises. These reports will detail the usage of water, and all agricultural practices including but not limited to use of pesticides, herbicides, fertilizers, and soil amendments. The required reports are specified in the RMP. In addition, LESSEE shall provide to CITY, upon request by CITY, the following information: map showing location of well(s), well installation permit(s), well condition (operating, non-operating, abandon), annual pumping volumes, drilling/geologic or hydrologic data, well construction details, well modifications or rehabilitation, all pump test data and analysis, electrical efficiency tests of well pump, all groundwater-level analyses, annual pumping volumes (acre feet), annual cropping patterns (acres), and upon request provide cooperation as the Groundwater Management Plan is implemented. Failure to provide the information requested under this section shall constitute a default under the terms of this Lease.

8.3 Noxious Weeds, Pests, and Erosion.

LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire leased premises.

8.4 No Warranty.

CITY does not warrant that the premises are suitable for the purposes for which they are leased as stated herein.

8.5 Hold Harmless, Flood Damage and Other Acts of God.

LESSEE understands and agrees that the leasehold area is subject to flood damage and that other damage may result to the leasehold from other circumstances, including weather conditions and such causes as fire and earthquakes. LESSEE agrees that any damages resulting from flooding or such other causes shall not result in any liability on the part of the CITY, and LESSEE specifically agrees to assume the defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes. LESSEE is authorized to minimize potential flood damage through improved drainage and other flood control improvements as agreed upon with CITY.

Were it not for LESSEE'S agreement to assume all risk regarding flooding and LESSEE'S further agreement that CITY has absolutely no obligation with regard

to controlling or mitigating or reducing flood damages or potential flood damages, CITY would not enter into this Lease.

8.6 Water Rights.

CITY reserves all of its right, title and interest in and to the water on the leased premises. There is hereby reserved to CITY and LESSEE herein expressly agrees CITY shall have the right throughout the lease term to divert, impound, store and transport by means of dams, reservoirs, or by pumping any and all water, both surface and underground, which flow over, under or across the leased premises, together with the right to divert, inject, spread or percolate water in or through the soils beneath the surface of the leased premises. Nothing in this Lease shall result in the transfer of the CITY'S rights, title or interest in the water on the leased premises to any other person or entity.

a. LESSEE has been expressly advised and acknowledges that:

- (1) The leased premises are located within the San Pasqual groundwater basin.
- (2) The CITY is the lawful owner and has at all times asserted its pueblo, overlying and appropriative water rights in the San Pasqual groundwater basin;
- (3) The CITY intends to take any and all steps necessary to fully protect its water rights in the San Pasqual groundwater basin, including but not limited to, the Groundwater Management Plan, adopted November 2007, and possible adoption of a groundwater management ordinance;
- (4) Protection of the CITY'S water rights in the San Pasqual groundwater basin is an essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for city residents;
- (5) Another essential element of the CITY'S long term plan to ensure a reliable and cost-effective water supply for city residents is the increased production and distribution of recycled water for non-potable uses such as those which are the subject of this Lease;
- (6) In order for the CITY to accomplish its long term objectives, it is planned that San Pasqual groundwater basin will be utilized, in part, for the storage of imported or non-potable water, and , that such storage will necessitate certain activities by CITY employees and consultants on the leased premises; and

- (7) Any injury that results from the percolation, storage and recapture of water from the soil beneath the surface of the leased premises shall not be considered unreasonable or substantial interference with the LESSEE'S use of the leased premises, nor otherwise entitle LESSEE to damages or other legal recourse against CITY, except as otherwise provided in Section 1.5, Easements and Reservations.
- b. LESSEE shall have the right, at LESSEE'S sole cost, to develop and use on the leased premises only the amount of water available and necessary to carry out the purpose of this Lease, as follows:
 - (1) As to any existing well, LESSEE shall have the right to operate the well and use the water on the leased premises, subject to Section 3.7 Payment for Right to Use Water, and Section 3.8 Water Payment Formula, including the right of ingress and egress to the well area. CITY shall install, at CITY'S sole cost, a metering device on all well(s) (including open wells) satisfactory to measure the quantity of water pumped from the well(s). CITY shall have the right to reasonable access to such metering devices(s) as required for periodic meter reading and to determine that said meter(s) are functioning properly.
 - (2) LESSEE may only make material modifications to existing wells or construct new wells with the express written approval of CITY and per appropriate County Code. Said approval shall not be unreasonably withheld and CITY shall respond within 30 days of a written request for approval from LESSEE. Any abandoned well shall be closed per the standards of the County Sanitarian.
 - (3) CITY has made no representations or guarantees to LESSEE as to the quantity or quality of water which may be available to LESSEE.
- c. LESSEE agrees that upon termination of this Lease, it will leave any wells developed or used on the leased premises during the term of this Lease in good order and condition and that the casing shall be left in place.
- d. CITY shall at all times have the right to reasonable access to the leased premises to protect its water rights and water quality; for monitoring the level and quality of natural surface and groundwater over and under the leased premises; and, for purposes necessary to the implementation of any groundwater management plan that may be adopted by CITY. Should the monitoring indicate surface and/or groundwater quality degradation, the CITY shall in its sole discretion have the right to require reasonable

alteration of any irrigation or other practices by LESSEE which may cause such water quality degradation as determined by CITY.

- e. CITY shall have the right in its sole discretion to construct over and under the leased premises its own wells, pipelines, and other facilities necessary to develop the maximum water yield potential of the leased premises.

SECTION 9: SPECIAL PROVISION

9.1 Potential Construction of Public Hiking, Biking and Riding Trails.

LESSEE has been advised and acknowledges that the leased premises are within the focused planning area of the proposed San Dieguito River Valley Park. LESSEE has further been advised and acknowledges that a system of public hiking, biking and riding trails has been proposed for inclusion through the San Dieguito River Valley Park. LESSEE agrees that, in the event such trails are to be constructed through the leased premises that the property needed for such trails may be deleted from the leasehold area subject to 90 days prior written notice from the CITY. The notice of intent to delete the trail area shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any trees, crops or leasehold improvements growing in the area taken for trails be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and Mayor. CITY further agrees that, in the event a portion of the leasehold is taken for such trails as described above, the trails shall be fenced as necessary for the reasonable security and/or protection of the remainder of the leased premises. All costs related to the construction and maintenance of trails and security fencing installed on the leasehold shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

9.2 LESSEE Responsibility for Preserving Environmental, Historical and Cultural Resource Sites.

LESSEE understands and agrees that, in connection with the establishment of the San Dieguito River Valley Park, sensitive resource sites as well as environmental, historical, and cultural resources may be identified along the proposed trail system or elsewhere on the leased premises. LESSEE agrees that it shall be responsible for protecting such sites and resources to the extent reasonably feasible and, if required by CITY, would include lease boundary fencing. However, if additional measures for protecting the site are required, the installation and maintenance costs involved shall be the sole responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

9.3 Public Access to Trails and/or Environmental, Historical, and Cultural Resource Sites.

LESSEE has been advised and acknowledges that public access may be required through the leased premises to access hiking, biking, and riding trails constructed on the property. Also such public access may be necessary for viewing environmental, historical, and/or cultural resources sites located on the leasehold. In this event the property needed for public access may be deleted from the leasehold area upon 90-day prior written notice from the CITY. Said notice of intent to delete the public access area shall include a plat clearly designating the property to be deleted. In the event of such deletion of leasehold area, CITY agrees that the minimum or fixed rent shall be reduced accordingly. In addition, should any fruit trees, crops or leasehold improvements in the area taken for public access be damaged or destroyed, CITY agrees to reimburse LESSEE for the value of the trees and/or crops and/or the cost of replacing any improvements in a total amount as reasonably determined by the LESSEE and Mayor. CITY further agrees that, in the event a portion of the leasehold is taken for such public access as described above, said public access shall be fenced as necessary for the reasonable security and/or protection of the remainder of the leased premises. All costs related to the construction and maintenance of the security fencing shall be the responsibility of CITY or another public agency or body charged with operating and/or maintaining the San Dieguito River Valley Park.

9.4 Boundary Adjustments.

LESSEE has been advised and acknowledges that the boundaries of the leased premises are subject to adjustment related to the Multiple Species Conservation Program. LESSEE agrees that, in the event such boundary adjustments are made, the property needed for Multiple Species Conservation Program may be deleted from the leasehold area, subject to Section 1.5 and with 180 days prior written notice from CITY. The notice of intent to delete said property shall include a plat clearly designating the area to be deleted. In the event of such deletion of leasehold area, CITY agrees that the rent shall be reduced accordingly and LESSEE shall be compensated for the loss of improvements.

9.5 Leasehold Boundaries.

The CITY shall survey the leasehold area and identify, on ground, demarcation boundaries. When the boundaries have been established by the City, the LESSEE shall maintain identifying markers at the leasehold.

9.6 Housing of Permanent Employees.

To the extent legally feasible, LESSEE shall provide adequate housing for permanent employees, i.e., those who work on the premises on a daily basis for a minimum of eleven (11) months during the calendar year. Housing provided by

LESSEE shall be installed and maintained on the premises in accordance with applicable City of San Diego and Health and Safety Zoning requirements.

9.7 Annual Report on Farmworker Housing.

By March 1 of each Lease Year, LESSEE shall submit an annual report to CITY with the following information for each farm worker residence located on the leasehold:

- a. Street address or leasehold area location;
- b. Tenant of record and total number of occupants;
- c. Itemized list of improvements performed by LESSEE over the previous one-year period and the cost.

9.8 City's Right to Buy Back Leasehold Interest.

LESSEE agrees that CITY may, at its option, purchase LESSEE'S leasehold interest at any time following the first five (5) years of the term of this Lease. The CITY'S option shall be exercised by giving LESSEE at least six (6) months prior written notice of intent to purchase the leasehold.

Upon LESSEE'S receipt of such notice, LESSEE agrees to cooperate with CITY in designating an appraiser satisfactory to both CITY and LESSEE to conduct an appraisal of LESSEE'S remaining leasehold interest. The appraiser's determination of the leasehold value shall be binding on the CITY and LESSEE. If no concurrence upon an individual appraiser is reached within 15 days following LESSEE'S receipt of notice of CITY'S intent to repurchase, CITY and LESSEE agree that each shall immediately appoint and pay for the services of an individual appraiser both of whom shall be charged with determining the fair market value of the LESSEE'S remaining leasehold interest. If the appraisals are within 20 percent of one another (the larger appraiser being not more than 20 percent higher than the lower appraisal), the fair market value shall be the average of the two appraisal amounts.

If the two appraisals differ by more than 20 percent and the Mayor and LESSEE cannot agree to a fair market value and an impasse is thus reached, then the two appraisers shall be asked to mutually agree upon a third independent appraiser. If the two appraisers do not mutually agree upon a third appraiser within a reasonable time after such request, the CITY and LESSEE agree that the Presiding Judge of the Superior Court in San Diego shall be requested to appoint the third appraiser. If the Presiding Judge for any reason declines to make such appointment, the parties agree that such appointment shall be made expeditiously and in accordance with the standard rules of the American Arbitration Association.

The third appraiser shall review the results of the two appraisals and render an opinion as to the fair market value. The third appraiser's determination shall be binding on the CITY and LESSEE. The CITY and LESSEE shall equally bear the cost of the third appraiser.

Upon a determination of the leasehold value, CITY shall have ninety (90) days in which to determine whether or not to allocate funds and authorize the expenditure of such funds for the acquisition of the leasehold. In the event CITY determines not to acquire the leasehold, CITY agrees to reimburse LESSEE for its actual costs for the appraisal and shall have no further obligations to LESSEE for any costs or damages incurred by LESSEE as a result of such determination not to proceed with acquisition.

In determining the fair market value of LESSEE'S leasehold interest, CITY and LESSEE agree that the appraiser or appraisers will be directed to establish the leasehold value based upon all the terms and conditions of the Lease. LESSEE specifically agrees, however, that no "bonus" value shall be paid for LESSEE'S leasehold interest. The appraiser or appraisers shall be directed to assume that the Lease requires the payment of full fair market rent on the leasehold property at all times during the remaining lease term. LESSEE further specifically agrees that any permanent capital improvements constructed by LESSEE on the leased premises shall be appraised by taking the initial construction cost of such improvements and depreciating such improvements on a straight-line basis over a twenty-five year (25) year period from the date of installation of such improvements, or over the remaining lease term, whichever time period is the lesser.

In the event there are City-approved loans or encumbrances against LESSEE'S leasehold interest, CITY agrees that the buy-out price shall in no event be less than the then remaining balance of any such loans or encumbrances. Should the CITY determine to repurchase, LESSEE shall have up to one year in which to vacate the premises. During any such continued use by LESSEE, LESSEE shall continue to pay to CITY the rents provided for in the Lease. The buy-out price shall be paid within 10 days after LESSEE vacates the premises.

9.9 Hazardous/Toxic Waste.

Other than approved agricultural chemicals, i.e., insecticides, pesticides, herbicides, and fungicides applied in accordance with all applicable regulations, LESSEE will not allow the installation or release of hazardous substances in, on, under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substance. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of

hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's office as City Clerk Document 769704-1.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including, but not limited to, costs of environmental assessments, cost of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the Mayor within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the Mayor immediately upon receipt of this knowledge or belief and shall take all acts necessary to alleviate such danger. LESSEE will notify the Mayor immediately of any notice of violation received or initiation of environmental action or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

Notwithstanding the above, LESSEE shall not be responsible for any toxic waste or hazardous substance disposed of or discharged on the premises prior to the effective date of this Lease.

000090

SECTION 10: SIGNATURES

10.1 Signature Page.

IN WITNESS WHEREOF, this Lease is executed by CITY, acting by and through its Mayor,
and by LESSEE, acting by and through its lawfully authorized officers.

Date: _____

THE CITY OF SAN DIEGO, a California municipal
Corporation

BY: _____

Name: _____

Title: _____

Date: 8-29-08

RANCHO DE LA LOMA, LLC

BY: 

Name: Matthew Wifman

Title: Manager

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section _____.

Date: _____

BY: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: _____

Title: _____

DCM/cb

I:\WPO\2008\MARTENS\LEASE - Rancho De La Loma 8-4-08.doc
8-4-08

000091

SECTION 11: EXHIBITS

11.1 Exhibit A Premises

Excludes approximately 2,430 square feet for a communication equipment shelter and does not depict the shared access road to the communication site maintained annually by LESSEE.

EXHIBIT A - PREMISES



11.2 Exhibit B. Offsite Well Location

Offsite well location includes well site and approximate location of water service piping to lease premises.

EXHIBIT B - OFFSITE WELL LOCATION



ORDINANCE NUMBER O-_____

DATE OF FINAL PASSAGE _____

AN ORDINANCE AUTHORIZING THE MAYOR, OR HIS
DESIGNEE, TO EXECUTE A 15-YEAR PERCENTAGE LEASE
WITH RANCHO DE LA LOMA, LLC FOR APPROXIMATELY
64 ACRES LOCATED IN THE SAN PASQUAL VALLEY
AGRICULTURAL PRESERVE.

WHEREAS, the acreage is authorized for the growing and harvesting of avocados and
other related agricultural use; and

WHEREAS, the Rancho De La Loma avocado orchard was planted by a previous lessee
in 1971; and

WHEREAS, in 1983, Witman Ranch bought the leasehold and assumed debt owed to the
Small Business Association; and

WHEREAS, under new management, the leasehold became a productive business and the
SBA was paid all past due loans amounts in less than the agreed timeframe; and

WHEREAS, the Witman family has leased agricultural land from the City since Bill
Witman arrived in the San Pasqual Valley [Valley] in 1965; and

WHEREAS, Bill Witman's son, Matt Witman, has been a part of the family business for
the last 26 years and is now in charge of all operations for Witman Ranch, which includes
Rancho De La Loma, LLC; and

WHEREAS, the lease area consists of approximately 64 acres located on a steep southern
hillside within the Valley. Forty acres are used for avocado production; the remaining 24 acres
are comprised of access roads, a metal storage building and firebreak areas.

WHEREAS, in 2003, to adjust to market trends and maximize the revenue from the avocado grove, the Witmans obtained certified organic status. Certified organic farming utilizes ecologically based practices such as cultural and biological pest management, exclusion of all synthetic chemicals, antibiotics, and hormones in crop production; and

WHEREAS, the current lease has approximately two years remaining on the original 24-year term; and Rancho De La Loma, LLC is requesting a new 15-year percentage lease agreement for approximately 64 acres in the San Pasqual Valley Agricultural Preserve on Water Department Property; and

WHEREASE, the leasehold sustained extensive damage as a result of the October 2007 Witch Creek Fire when approximately 60% of the avocado grove and 90% of the above ground irrigation were destroyed or damaged; and

WHEREAS, Matt Witman appeared before the Ad-Hoc Fire Prevention and Recovery Committee in January requesting a new lease term to enable reinvestment in the leasehold; and

WHEREAS, Rancho De La Loma, LLC is requesting a new 15-year percentage lease agreement for approximately 64 acres in the San Pasqual Valley Agricultural Preserve on Water Department Property; and

WHEREAS, Matt Witman proposes to spend approximately \$180,000 to restore the avocado grove to pre-fire production levels within 5-7 years; and

WHEREAS, under the proposed lease, rent to the City will be 25% of the lessee's first \$550,000 of gross income and 33% of gross income above \$550,000 per year, less picking and packing costs, and the annual minimum rent is \$15,000 per year; and

WHEREAS, that the staff has determined this rent structure, will provide the City a greater share of the lessee's gross income than the existing lease, to be commensurate with the market; and

WHEREAS, that the average rent over the last five years has paid an average annual rent of \$105,401. Percentage rent paid to the City in the first few years of the new lease will be lower than this amount while the lessee reestablishes production from the grove. The proposed lease also contains a fire recovery rent credit of \$25,000 for the first year and \$15,000 for the second year, and

WHEREAS, the agreement conforms to the Water Departments implementation of the Groundwater Management Plan currently underway in San Pasqual Valley, and to the San Pasqual Vision Plan implemented in 2005 as Council Policy 600-45; and

WHEREAS, Rancho De La Loma's certified organic status provides further protection to the City's groundwater basin; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

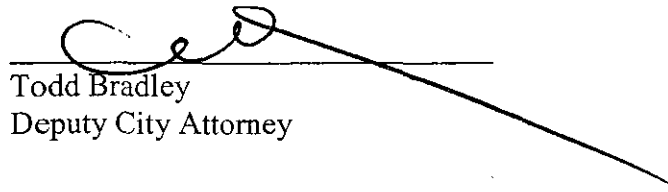
Section 1. That the Mayor, or his designee, is authorized to execute and deliver, for and on behalf of The City of San Diego [City], a fifteen (15) year lease between Rancho De La Loma, LLC., as tenant, and the City, as lessor, relating to the leasing of approximately 64 acres of land, a copy of which is in the Office of the City Clerk as Document No. 00-_____.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public a prior to the day of passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Todd Bradley
Deputy City Attorney

TB:bas
09/22/08
Or.Dept: READ
O-2009-45
MMS #6811

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor